

LEGAL UPDATE

IRS Issues Interim Guidance on Matching Contributions Made on Account of Qualified Student Loan Repayments

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Starting in 2024, Section 110 of the SECURE 2.0 Act allows employers to make matching contributions to Section 401(k), 403(b), and governmental 457(b) plans, and SIMPLE IRAs (which have analogous but slightly different requirements) on account of employees' qualified student loan payments (QSLPs) rather than their elective contributions. Many plan sponsors have deferred implementation of QSLP matches pending IRS guidance, and on August 19, 2024, the IRS issued Notice 2024-63, which provides interim guidance in a question-and-answer format. It addresses discrete issues of eligibility, annual certification, ADP testing, and reasonable procedures to administer a plan with a QSLP matching feature. This interim guidance may encourage employers interested in a QSLP program to consider adopting such a feature because it allows employees with large education loans who cannot afford to save for retirement to receive employer-matching contributions without themselves having to make elective deferrals to a plan.

Under the Internal Revenue Code (Code), a QSLP is a payment: (i) made by an employee during a plan year in repayment of a qualified education loan incurred by the employee to pay for qualified higher education expenses of

the employee, the employee's spouse, or the employee's dependent; (ii) that does not exceed, when aggregated with other such payments during the year, the lesser of the Code Section 402(g) limit for the year or the employee's compensation as defined under Code Section 415, reduced by the employee's elective deferrals for the plan year; and (iii) that is certified for the plan year by the employee.

Under the first requirement, the employee must be legally obligated to make the payment under the terms of the loan to receive a QSLP match on account of that payment. In general, a cosigner has a legal obligation to make payments under the terms of a loan, but only after the primary borrower defaults under the loan.

With respect to the second requirement, the amount of the employee's QSLP a Section 401(k) or 403(b) plan can take into account is the lesser of the Code section 402(g) deferral limit reduced by the employee's elective deferrals, and the amount of the employee's compensation. A similar concept of elective deferrals applies to limit an employee's QSLP in Section 457(b) plans.

With respect to the third requirement, the employee must submit a certification that education loan payments are

QSLPs. A plan may require a separate certification for each education loan payment intended to be a QSLP or permit an annual certification that applies to all education loan payments intended to qualify as QSLPs for a year. Five items of information must be provided to satisfy the Plan's QSLP certification requirements:

1. The amount of the loan payment;
2. The date of the loan payment;
3. That the payment was made by the employee;
4. That the loan being repaid is a qualified education loan and was used to pay for qualified higher education expenses of the employee, the employee's spouse, or the employee's dependents; and
5. That the loan was incurred by the employee.

Information about items 1, 2 and 3 must be received at least annually by the plan. Information about items 4 and 5 does not need to be provided annually if the employee registers the loan with the plan, but may need to be updated or registered if the loan is refinanced or other information changes.

The certification requirement can be satisfied annually through an affirmative certification by the employee. The employer may choose to independently verify the amount of the loan, the date of the loan payment, and that the payment was made by the employee, with one type of independent verification being the employee making the qualified loan repayments through payroll deduction. Overall, the Notice provides flexibility in satisfying the certification requirement that will ease the administrative burden for plan sponsors.

Matching contributions on QSLPs must be made at the same rate and under the same vesting schedule as applied to the plan's regular elective deferral match. The Notice does not describe the administrative procedures that govern a QSLP match feature and simply says a plan may establish any reasonable procedures to implement a QSLP match feature. Whether a procedure is reasonable depends on all relevant facts and circumstances, including whether the QSLP matches are effectively available to all eligible employees and whether the procedures promote compliance with QSLP match requirements. For example, the Notice explains that a plan may establish a single QSLP match claim deadline for a year, or multiple deadlines including quarterly deadlines. An annual deadline that is three months after the end of a plan year is an example of a reasonable deadline, but the deadline can be earlier as long as it is reasonable.

The Notice also provides options for how actual deferral percentage (ADP) testing can be performed. It provides two methods of applying a separate ADP test for employees who receive QSLP matches and a main ADP test that includes employees who do not receive QSLP

matches: one method separately tests the elective deferrals of employees who receive QSLP matches, while the other method separately tests employees who receive QSLP matches but they are included in the main ADP test if they make elective deferrals. The first method may be helpful if non-highly compensated employees who receive QSLP matches have a higher deferral percentage than highly compensated employees, while the other method may be helpful if highly compensated employees who receive QSLP matches have a higher deferral percentage than non-highly compensated employees who receive QSLP matches.

The IRS also provided guidance in the Notice on other issues:

- A plan may not limit QSLP matches to only certain qualified education loans, such as qualified education loans for an employee's own education, for a particular degree program, or for attendance at a particular school.
- A plan with a QSLP match feature may not exclude employees from receiving QSLP matches if they are eligible to receive elective deferral matches, or exclude employees from receiving elective deferral matches if they are eligible to receive QSLP matches. However, it is permissible to include a QSLP match feature only for non-collectively bargained employees.
- Only an employee's qualified education loan payments made during a plan year are eligible to be counted for purposes of the employee's QSLP match for the plan year.
- A QSLP match may be added to a safe harbor 401(k) plan as a midyear change as long as the safe harbor notice requirements are satisfied.
- A plan may provide for QSLP matches to be contributed at a different frequency than elective deferral matches, provided the QSLP matches are required to be contributed at least annually. For example, it would be permissible for QSLP matches to be contributed once each year and for elective deferral matches to be contributed on a payroll basis.
- Plans may, but are not required to, provide for contributions of QSLP matches on a rolling basis as employees submit claims. Alternatively, a plan may provide for QSLP matching contributions for a plan year to be made at the same time for all employees receiving QSLP matches for the plan year.
- If an employee's certification of a QSLP is found to be incorrect, a match based on that certification does not need to be corrected and may be treated as a QSLP match. However, if correction is made, it must be made to all QSLP matches made under similar circumstances. The option not to correct an incorrect certification does not apply if an operational failure occurs in administering a QSLP match feature.

The Notice applies for plan years beginning after December 31, 2024. For plan years beginning before January 1, 2025, a plan sponsor may rely on a good faith interpretation of Section 110. The IRS anticipates issuing proposed regulations under Section 110, and the Notice solicits comments on specific issues as well as on the guidance itself. The IRS also indicated that proposed regulations would be issued under Code Section 409A addressing the application of Code Section 409A to a nonqualified deferred compensation plan linked to a plan with a QSLP feature.

The guidance helpfully explains the IRS's interpretation of the new QSLP match provision in the SECURE 2.0 Act. Plan sponsors will have to consider whether they want to add this feature to their defined contribution plans, what certification process will be used, who will administer the certification requirements and which ADP testing method will be more appropriate.

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